woman, what do you know?" and "We need a man as the rental manager"; at least once, he told her she was "a dumb ass woman." Again in front of others, he suggested that the two of them "go to the Holiday Inn to negotiate Harris's raise." He made sexual innuendos about Harris's and other women's clothing.

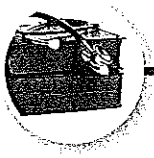
Six weeks before Harris quit her job, Harris complained to Hardy about his conduct. Hardy said he was surprised that Harris was offended, claimed he was only joking, and apologized. He also promised he would stop, and based on this assurance, Harris stayed on the job. But two weeks later, Hardy began anew. While Harris was arranging a deal with one of Forklift's customers, he asked her, again in front of other employees, "What did you do, promise the guy some sex Saturday night?" One month later, Harris collected her paycheck and quit.

Harris then sued Forklift, claiming that Hardy's conduct was sexual harassment that created a hostile work environment for her because of her gender. Who wins? *Harris v. Forklift Systems Incorporated*, 510 U.S. 17, 114 S.Ct. 367, 126 L.Ed.2d 295, Web 1993 U.S. Lexis 7155 (Supreme Court of the United States)

19.5 Bona Fide Occupational Qualification (BFOQ) Johnson Controls, Inc. (Johnson Controls), manufactures batteries. Lead is the primary ingredient in the manufacturing process. Exposure to lead entails health risks, including risk of harm to a fetus carried by a female employee. To protect unborn children from such risk, Johnson Controls adopted an employment rule that prevented pregnant women and women of childbearing age from working at jobs involving lead exposure. Only women who were sterilized or could prove they could not have children were not affected by the rule. Consequently, most female employees were relegated to lower-paying clerical jobs at the company. Several female employees filed a class action suit, challenging Johnson Controls's fetal-protection policy as sex discrimination, in violation of Title VII of the Civil Rights Act. Johnson Controls defended, asserting that its fetal-protection policy was justified as a bona fide occupational qualification (BFOQ). Is Johnson Controls's fetal-protection policy a BFOQ, or does it constitute sex discrimination, in violation of Title VII? *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 111 S.Ct. 1196, 113 L.Ed.2d 158, Web 1991 U.S. Lexis 1715 (Supreme Court of the United States)

19.6 Sex Discrimination The Los Angeles Department of Water and Power maintains a pension plan for its employees that is funded by both employer and employee contributions. The plan pays men and women retirees' pensions with the same monthly benefits. However, because statistically women live, on average, several years longer than men, female employees are required to make monthly contributions to the pension fund that are 14.84 percent higher than the contributions required of male employees. Because employee contributions are withheld from paychecks, a female employee takes home less pay than a male employee earning the same salary. Does this practice violate Title VII? *City of Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed.2d 657, Web 1978 U.S. Lexis 23 (Supreme Court of the United States)

19.7 Sex Discrimination The position of director of the Madison County Veterans Service Agency became vacant. The Madison County Board of Supervisors (Board) appointed a committee of five men to hold interviews. Maureen E. Barbano applied for the position and was interviewed by the committee. Upon entering the interview, Barbano heard someone say, "Oh, another woman." When the interview began, Donald Greene, a committee member, said he would not consider "some woman" for the position. He then asked Barbano personal questions about her plans on having a family and whether her husband would object to her transporting male veterans. No committee member asked Barbano any substantive questions. Ultimately, Board acted on the committee's recommendation and hired a male candidate. Barbano sued Madison County for sex discrimination, in violation of Title VII of the Civil Rights Act. Has the Madison County Board of Supervisors engaged in sex discrimination, in violation of Title VII? *Barbano v. Madison County, New York*, 922 F.2d 139, Web 1990 U.S. App. Lexis 22494 (United States Court of Appeals for the Second Circuit)



Ethics Cases

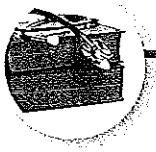
19.8 Ethics Dianne Rawlinson, 22 years old, was a college graduate whose major course of study was correctional psychology. After graduation, she applied for a position as a correctional counselor (prison guard) with the Alabama Board of Corrections. Her application was rejected because she failed to meet the minimum 120-pound weight requirement of an Alabama statute that also established

that the flat roof on which the employees were working served as a "temporary floor," and therefore it was not required to install a safety net. Has Corbesco violated the OSHA safety standard? *Corbesco, Inc. v. Dole, Secretary of Labor*, 926 F.2d 422, 1991 U.S. App. 3369 (United States Court of Appeals for the Fifth Circuit)

20.4 ERISA United Artists was a Maryland corporation doing business in the state of Texas. United Pension Fund (Plan) was a defined-contribution employee pension benefit plan sponsored by United Artists for its employees. Each employee had his or her own individual pension account, but Plan's assets were pooled for investment purposes. Plan was administered by a board of trustees. During a period of nine years, seven of the trustees used Plan to make a series of loans to themselves. The trustees did not (1) require the borrowers to submit written applications for the subject loans, (2) assess the prospective borrowers' ability to repay the loans, (3) specify a period in which the loans were to be repaid, or (4) call in the loans when they remained unpaid. The trustees also charged less than fair market value interest rates for the loans. The secretary of labor sued the trustees, alleging that they had breached their fiduciary duty, in violation of ERISA. Who wins? *McLaughlin v. Rowley*, 698 F.Supp. 1333, Web 1988 U.S. Dist. Lexis 12674 (United States District Court for the Northern District of Texas)

20.5 Unemployment Benefits Devon Overstreet, who worked as a bus driver for the Chicago Transit Authority (CTA) for more than six years, took sick leave for six weeks. Because she had been on sick leave for more than seven days, CTA required her to take a medical examination. The blood and urine analysis indicated the presence of cocaine. A second test confirmed this finding. The CTA suspended Overstreet and placed her in the employee assistance program for substance abuse for not less than thirty days, with a chance of reassignment to a nonoperating job if she successfully completed the program. The program is an alternative to discharge and is available at the election of the employee. Overstreet filed for unemployment compensation benefits. CTA contested her claim. Who wins? *Overstreet v. Illinois Department of Employment Security*, 168 Ill.App.3d 24, 522 N.E.2d 185, Web 1988 Ill.App. Lexis 269 (Appellate Court of Illinois)

20.6 Workers' Compensation John B. Wilson was employed by the city of Modesto, California, as a police officer. He was a member of the special emergency reaction team (SERT), a tactical unit of the city's police department that is trained and equipped to handle highly dangerous criminal situations. Membership in SERT is voluntary for police officers. No additional pay or benefits are involved. To be a member of SERT, each officer is required to pass physical tests four times a year. One such test requires members to run 2 miles in seventeen minutes. Other tests call for minimum numbers of push-ups, pull-ups, and sit-ups. Officers who do not belong to SERT are not required to undergo these physical tests. One day, Wilson completed his patrol shift, changed clothes, and drove to the Modesto Junior College track. While running there, he injured his left ankle. Wilson filed a claim for workers' compensation benefits, which was contested by his employer. Who wins? *Wilson v. Workers' Compensation Appeals Board*, 196 Cal.App.3d 902, 239 Cal.Rptr. 719, Web 1987 Cal.App. Lexis 2382 (Court of Appeal of California)



Ethics Cases

20.7 Ethics Jeffrey Glockzin was an employee of Nordyne, Inc. (Nordyne), which manufactured air-conditioning units. Sometimes Glockzin worked as an assembly line tester. The job consisted of using bare metal alligator-type clips to attach one of two wire leads from the testing equipment to each side of the air-conditioning unit. When the tester turned on a toggle switch, the air-conditioning unit was energized. Once a determination was made that the air-conditioning unit was working properly, the toggle switch would be turned off and the wire leads removed.

One day, while testing an air-conditioning unit, Glockzin grabbed both alligator clips at the same time. He had failed to turn off the toggle switch, however. Glockzin received a 240-volt electric shock, causing his death. Glockzin's heirs sued Nordyne for wrongful death and sought to recover damages for an intentional tort. Nordyne made a motion for summary judgment, alleging that workers' compensation benefits were the exclusive remedy for Glockzin's death. Glockzin's heirs argued that the "intentional tort" exception to the rule that workers' compensation is the exclusive remedy for a worker's injury applied in this case. *Glockzin v. Nordyne, Inc.*, 815 F.Supp. 1050, Web 1992 U.S. Dist. Lexis 8059 (United States District Court for the Western District of Michigan)

1. What is the exclusive remedy rule of workers' compensation? What is the intentional tort exception to this rule?

Act (NLRA) permits unions and employers to negotiate an agreement that requires union membership as a condition of employment for all employees. Although Section 8(a)(3) states that unions may negotiate a clause requiring membership in the union, an employee can satisfy the membership condition merely by paying to the union an amount equal to the union's initiation fees and dues. In other words, the membership that may be required as a condition of employment is whittled down to its financial core.

Section 8(a)(3) does not permit unions to exact dues or fees from employees for activities that are not germane to collective bargaining, grievance adjustment, or contract administration. Section 8(a)(3) permits unions and employers to require only that employees pay the fees and dues necessary to support the union's activities as the employees' exclusive bargaining representative. The union security clause negotiated between Lakeside Productions and SAG is lawful under federal labor law. *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 119 S.Ct. 292, 142 L.Ed.2d 242, Web 1998 U.S. Lexis 7110 (Supreme Court of the United States)

Critical Legal Thinking Cases

21.1 Unfair Labor Practice The Teamsters Union (Teamsters) began a campaign to organize the employees at a Sinclair Company (Sinclair) plant. When the president of Sinclair learned of the Teamsters' drive, he talked with all of his employees and emphasized the results of a long strike thirteen years earlier that he claimed "almost put our company out of business," and he expressed worry that the employees were forgetting the "lessons of the past." He emphasized that Sinclair was on "thin ice" financially, that the Teamsters' "only weapon is to strike," and that a strike "could lead to the closing of the plant" because Sinclair had manufacturing facilities elsewhere. He also noted that because of the employees' ages and the limited usefulness of their skills, they might not be able to find reemployment if they lost their jobs. Finally, he sent literature to the employees stating that "the Teamsters Union is a strike happy outfit" and that they were under "hoodlum control," and included a cartoon showing the preparation of a grave for Sinclair and other headstones containing the names of other plants allegedly victimized by unions. The Teamsters lost the election 7 to 6 and then filed an unfair labor practice charge with the National Labor Relations Board (NLRB). Has Sinclair violated labor law? Who wins? *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 89 S.Ct. 1918, 23 L.Ed.2d 547, Web 1969 U.S. Lexis 3172 (Supreme Court of the United States)

21.2 Right-to-Work Law Mobil Oil Corporation (Mobil) had its headquarters in Beaumont, Texas. It operated a fleet of eight oceangoing tankers that transported its petroleum products from Texas to ports on the East Coast. A typical trip on a tanker from Beaumont to New York took about five days. No more than 10 to 20 percent of the seamen's work time was spent in Texas. The three hundred or so seamen who were employed to work on the tankers belonged to the Oil, Chemical & Atomic Workers International Union, AFL-CIO (Union), which had an agency shop agreement with Mobil. The state of Texas enacted a right-to-work law. Mobil sued Union, claiming that the agency shop agreement was unenforceable because it violated the Texas right-to-work law. Who wins? *Oil, Chemical & Atomic Workers International Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407, 96 S.Ct. 2140, 48 L.Ed.2d 736, Web 1976 U.S. Lexis 106 (Supreme Court of the United States)

21.3 Plant Closing Arrow Automotive Industries, Inc. (Arrow), was engaged in the remanufacture and distribution of automobile and truck parts. All its operating plants produced identical product lines. Arrow was planning to open a new facility in Santa Maria, California. The employees at the Arrow plant in Hudson, Massachusetts, were represented by the United Automobile, Aerospace, and Agricultural Implement Workers of America (Union). The Hudson plant had a history of unprofitable operations. Union called a strike when the existing collective bargaining agreement expired and a new agreement could not be reached. After several months, the board of directors of Arrow voted to close the striking plant. The closing gave Arrow a 24 percent increase in gross profits and freed capital and equipment for the new Santa Maria plant. In addition, the existing customers of the Hudson plant could be serviced by the Spartanburg plant, which was being underutilized. Union filed an unfair labor practice claim with the National Labor Relations Board (NLRB). Does Arrow have to bargain with Union over the decision to close a plant? What must be done if the Plant Closing Act applies to this situation? *Arrow Automotive Industries, Inc. v. N.L.R.B.*, 853 F.2d 223, Web 1988 U.S. App. Lexis 10091 (United States Court of Appeals for the Fourth Circuit)

21.4 Unfair Labor Practice The Frouge Corporation (Frouge) was the general contractor on a housing project in Philadelphia. The carpenter employees of Frouge were represented by the Carpenters' International Union (Union). Traditional jobs of carpenters included taking blank wooden doors and mortising them for doorknobs, routing them for hinges, and beveling them

- **Learned professional exemption.** The **learned professional exemption** applies to employees compensated on a salary or fee basis that perform work that is predominantly intellectual in character, who possess advanced knowledge in a field of science or learning, and whose advanced knowledge was acquired through a prolonged course of specialized intellectual instruction.
- **Highly compensated employee exemption.** The **highly compensated employee exemption** applies to employees who are paid total annual compensation of $100,000 or more, perform office or nonmanual work, and regularly perform at least one of the duties of an exempt executive, administrative, or professional employee.
- **Computer employee exemption.** The **computer employee exemption** applies to employees who are compensated either on a salary or fee basis; are employed as computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field; and are engaged in the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs.
- **Outside sales representative exemption.** The **outside sales representative exemption** applies to employees who will be paid by the client or customer, whose primary duty is making sales or obtaining orders or contracts for services, and who are customarily and regularly engaged away from the employer's place of business.

Sometimes employers give employees the title of "manager" to avoid the minimum wage and overtime pay requirements of the FLSA.

Example A large big-box store labels lower-level workers who actually stock shelves with goods as "managers" in order to avoid paying them overtime pay.

Family and Medical Leave Act

Family and Medical Leave Act (FMLA)
A federal act that guarantees workers up to twelve weeks of unpaid leave in a twelve-month period to attend to family and medical emergencies and other specified situations.

In February 1993, Congress enacted the **Family and Medical Leave Act (FMLA)**.[4] This act guarantees workers unpaid time off from work for family and medical emergencies and other specified situations. The act, which applies to companies with 50 or more workers as well as federal, state, and local governments, covers about half of the nation's workforce. To be covered by the act, an employee must have worked for the employer for at least one year and must have performed more than 1,250 hours of service during the previous twelve-month period.

Covered employers are required to provide up to twelve weeks of unpaid leave during any twelve-month period due to:

1. The birth of and care for a child
2. The placement of a child with an employee for adoption or foster care
3. A serious health condition that makes the employee unable to perform his or her duties
4. Care for a spouse, child, or parent with a serious health problem

Leave because of the birth of a child or the placement of a child for adoption or foster care cannot be taken intermittently unless the employer agrees to such arrangement. Other leaves may be taken on an intermittent basis. The employer may require medical proof of claimed serious health conditions.

An eligible employee who takes leave must, upon returning to work, be restored to either the same or an equivalent position with equivalent employment benefits and pay. The restored employee is not entitled to the accrual of seniority during the leave period, however. A covered employer may deny restoration to a salaried employee who is among the highest-paid 10 percent of that employer's employees if the denial is necessary to prevent "substantial and grievous economic injury" to the employer's operations.